



INTERIOR BOARD OF INDIAN APPEALS

Northern Cheyenne Livestock Association and its Members v. Acting Superintendent,
Northern Cheyenne Agency, Bureau of Indian Affairs

43 IBIA 24 (04/14/2006)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

NORTHERN CHEYENNE LIVESTOCK	:	Order Docketing and Dismissing
ASSOCIATION and ITS MEMBERS,	:	Appeal
Appellants,	:	
	:	
v.	:	Docket No. IBIA 06-60-A
	:	
ACTING SUPERINTENDENT,	:	
NORTHERN CHEYENNE AGENCY,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee.	:	April 14, 2006

On April 10, 2006, the Board of Indian Appeals received a Notice of Appeal and Statement of Reasons from the Northern Cheyenne Livestock Association and its Members (Appellants), through Steven A. Kelly, Esq. Appellants seek review of a March 10, 2006 decision of the Acting Superintendent, Northern Cheyenne Agency, Bureau of Indian Affairs (Superintendent), establishing a grazing rental rate of \$14.75 an Animal Unit Month for the 2006 grazing season for individually-owned Indian lands on the Northern Cheyenne Reservation. The Board docketed this appeal, but dismisses it as premature.

A decision made by a BIA official subordinate to a Regional Director must first be appealed to the appropriate Regional Director before it can be appealed to the Board. See 25 C.F.R. §§ 2.4(a), (e); 43 C.F.R. § 4.331(a). The cover letter enclosing Appellants' notice of appeal indicates that it was correctly sent to the Superintendent, as required when appealing a Superintendent's decision to the Regional Director. See 25 C.F.R. § 2.9(a). 1/ And it appears that Appellants properly served the Regional Director, as instructed in the Superintendent's March 10, 2006 decision. However, the notice of appeal itself is

1/ If this is not the case, the Regional Director should nevertheless consider the appeal as timely. The Superintendent's appeal instructions referred to filing a "notice of appeal to the Office of the Superintendent," rather than filing the notice "in" the Office of the Superintendent. See 25 C.F.R. § 2.9(a) (notice of appeal to a deciding official in BIA is filed "in" the office of the official whose decision is being appealed). We consider the Superintendent's language sufficiently ambiguous to warrant treating the appeal as timely-filed, even if Appellants did not send the notice to the Superintendent.

addressed to the “Interior Board of Indian Appeals” and it identifies the Rocky Mountain Regional Director as the “Appellee.” 2/ Although the notice of appeal seeks specific relief against the Superintendent’s decision, it also requests that the Board order the Regional Director to take certain actions.

Because the Superintendent’s decision is subject to appeal to the Regional Director, the Board lacks authority to review this matter at this time.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board docket this appeal, but dismisses it without prejudice as premature.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Amy B. Sosin
Acting Administrative Judge

2/ Appellants do not suggest that the Regional Director has issued a decision, stating only that they are appealing the Superintendent’s March 10, 2006 decision.